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**JUN 17 2008**

**OFFICE OF PETITIONS**

In re Application of :  
Nedim Fresko et al. :  
Application No. 10/821,468 : **DECISION ON PETITION**  
Filed: April 9, 2004 :  
Attorney Docket No. SUN1P870/SUN04-0475 :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed September 4, 2007, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to properly reply to the Notice of Non-Compliant Amendment mailed on May 4, 2007, which set a shortened statutory period for reply of one (1) month or thirty (30) days (whichever is later). No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on June 5, 2006. A Notice of Abandonment was mailed on August 1, 2007.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an amendment and election, (2) the petition fee of \$1,500, and (3) a proper statement of unintentional delay.

It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay. See 37 CFR 10.18(b) and Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53178 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 103 (October 21, 1997). In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that it is not correct that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, petitioner must notify the Office.

There is no indication that the person signing the instant petition was ever given a power of attorney or authorization of agent to prosecute the above-identified application. However, in accordance with 37 CFR 1.34(a), the signature appearing on the petition shall constitute a representation to the United States Patent and Trademark Office that he/she is authorized to represent the particular party in whose behalf he/she acts.

37 CFR 1.137(b)(3) requires a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. Since the statement contained in the petition varies from the language required by 37 CFR 1.137(b)(3), the statement contained in the petition is being construed as the statement required by 37 CFR 1.137(b)(3). Petitioner must notify the Office if this is **not** a correct interpretation of the statement contained in the petition.

Since Christopher Rauch is not attorney of record in this application, the change of address filed on September 4, 2007 is not acceptable. Therefore, a courtesy copy of this decision is being mailed to petitioner. Nevertheless all future correspondence will be mailed to the address of record.

Telephone inquiries concerning this decision should be directed to Kimberly Inabinet at (571) 272-4618.

This application is being referred to Technology Center AU 2165 for appropriate action by the Examiner in the normal course of business on the reply received September 4, 2007.



Andrea Smith  
Petitions Examiner  
Office of Petitions

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